

<sup>1</sup> Docket No. 06-1544 (issued November 16, 2006).

The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.<sup>2</sup>

On November 9, 2007 appellant again requested reconsideration. She argued that her disability was not self-generated. Appellant submitted a decision of the Equal Employment Opportunity (EEO) Commission upholding a final decision of the Merit Systems Protection Board (MSPB) which found no discrimination. She also submitted a Notice of Determination from Michigan's Bureau of Workers' & Unemployment Compensation.

In a decision dated November 20, 2007, the Office denied appellant's November 9, 2007 request for reconsideration. It found that the Notice of Determination was an exact duplicate of evidence previously submitted and considered. The Office further found that the EEO decision was immaterial because it provided no evidence to support that she was harassed by coworkers or management.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."<sup>3</sup>

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.<sup>4</sup> The one-year period begins on the date of the original decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following reconsideration, any merit decision by the Board and any merit decision following action by the Board, but does not include prerecoupment hearing decisions.<sup>5</sup>

The Office will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.<sup>6</sup>

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<sup>2</sup> On February 10, 2004 appellant, then a 42-year-old nursing assistant, filed a claim alleging stress as a result of her federal employment. The Office denied her claim on the grounds that she failed to establish any compensable factor of employment.

<sup>3</sup> 20 C.F.R. § 10.605 (1999).

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3.b(1) (January 2004) (emphasis deleted).

<sup>6</sup> 20 C.F.R. § 10.607 (1999).

### **ANALYSIS**

The most recent decision on the merits of appellant's case is the March 4, 2005 decision of the Office hearing representative, which affirmed the denial of her claim. The appeal rights attached to that decision explained that appellant had one year, or until March 4, 2006 to request reconsideration. Appellant's November 9, 2007 request is a year and eight months too late. The Board therefore finds her request untimely.<sup>7</sup>

The Board also finds that appellant's untimely request for reconsideration does not show clear evidence of error on its face that the Office's March 4, 2005 merit decision was erroneous. The Office denied appellant's claim because she did not meet her burden of proof to establish a compensable factor of employment. She did not prove that she was harassed, threatened or treated disparagingly at work. The EEO decision upheld a finding by the MSPB of no discrimination, so it does not establish error by the Office in the denial of her claim. The Notice of Determination from Michigan's Bureau of Workers' & Unemployment Compensation made no finding of harassment, threat or disparaging treatment. The evidence submitted shows that the Office's March 4, 2005 denial of compensation was erroneous. Because appellant's untimely request for reconsideration does not meet the standard for obtaining a merit review of her case, the Board will affirm the Office's November 20, 2007 decision denying that request.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's November 9, 2007 request for reconsideration.

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<sup>7</sup> The Board's November 16, 2006 decision was not a decision on the merits of appellant's case. The only issue before the Board was whether the Office properly denied a request for reconsideration. Appellant did not have one year from that date of the Board's nonmerit decision to request reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 20, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board